

Cannabis Firm Disputes Insurer's Denial of Fire Loss Claim

Cannabis Company and Insurer Clash Over \$1.3 Million Business Income Loss Claim Following Fire

A dispute has arisen between National Fire and Marine Insurance Co., a subsidiary of Berkshire Hathaway, and Connecticut-based cannabis company Theraplant over a \$1.3 million claim for business income losses. The disagreement centers around the interpretation of the insurance policy terms following a fire that disrupted operations at one of Theraplant's facilities.

The Incident and Initial Claims

The conflict originated from a fire on February 8, 2020, caused by an exploding lamp in a light fixture within one of Theraplant's flowering rooms. This incident led to significant damage to the room's infrastructure, equipment, and nearly 1,000 marijuana plants. The fire forced the suspension of operations in the affected room for 68 days while repairs and cleaning were carried out.

Theraplant's insurance policy with National Fire covers building and personal property damage but explicitly excludes coverage for cannabis crops. Following the fire, National Fire compensated Theraplant \$483,233.56 for building damages and \$12,482.31 for damage to personal property. However, the two parties are now at odds over the claim for business income loss.

Dispute Over Business Income Loss Coverage

Theraplant claims that the inability to use the damaged flowering room resulted in a significant business income loss, totaling \$1,354,593. This figure is based on the net sales value of the production that was halted due to the fire. The company argues that this loss is covered under the policy's provisions for business income loss due to a suspension of operations.

However, National Fire disputes this interpretation, arguing that the policy covers business income loss only if it results directly from a suspension of operations due to a covered peril, such as property damage. The insurer asserts that Theraplant's claimed loss is tied to the damage and subsequent unsaleability of the cannabis plants, which are not covered under the policy.

Legal and Technical Interpretations

The dispute delves into the technical language of the insurance policy, particularly regarding the "period of restoration." National Fire contends that any business income loss must occur within this specified period, which begins 72 hours after the loss and ends when the building is repaired. They argue that since the cannabis crops would not have been sold until several months after the fire, the income loss falls outside the restoration period and is thus not covered.

Theraplant counters that the policy does not require the business income loss to occur during the restoration period, only that the loss must be due to the suspension of operations. They argue that the fire's impact on their ability to use the flowering room directly caused the business income loss, irrespective of the timeline for selling the crops.

Ongoing Legal Proceedings

The parties have filed opposing summary judgment motions in a federal court in Connecticut, seeking a legal determination on the coverage dispute. National Fire maintains that Theraplant is attempting to bypass the policy's exclusions on cannabis crops by framing the loss in terms of "lost sales value," rather than direct damage to the plants. This, according to the insurer, undermines the explicit exclusions outlined in the policy.

Theraplant, however, insists that the suspension of operations in the flowering room, a covered cause, is the primary reason for the business income loss. The company argues that under an "all risk" property policy, like the one in question, coverage is not negated simply because an excluded risk, such as damage to cannabis crops, is involved.

Industry Implications and Future Outlook

This case highlights the complexities and challenges in the cannabis industry, particularly around insurance coverage. Cannabis businesses often face difficulties securing comprehensive insurance due to the federal illegality of marijuana, which complicates policy terms and exclusions.

The outcome of this legal battle could set a significant precedent for how business income losses are treated in the cannabis industry, especially concerning policies that exclude certain types of property like cannabis crops. For insurers and businesses alike, the case underscores the importance of clearly defined policy terms and the potential for disputes in interpreting coverage.

As the court proceedings continue, the cannabis industry watches closely, aware that the decision could influence future insurance practices and policies. The case of Theraplant versus National Fire and Marine Insurance Co. encapsulates the broader challenges faced by cannabis businesses in navigating a regulatory and legal landscape that is still evolving.

Email: info@cannabisriskmanager.com | Phone: +415-226-4060

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